



Criminal Court of Appeal

Hon. Judge Dr. Consuelo Scerri Herrera, LL.D., Dip Matr., (Can) Ph.D

Appeal Nr: 214 / 2021

The Police
(Inspector Sarah Magri)

Vs

Ashley John Galea

Today the 1st March 2022

The Court,

Having seen the charges brought against Ashley John Galea, holder of Maltese identity number 393006 L, before the Court of Magistrates (Malta) as a Court of Criminal Judicature of having:

For the months of September 2019 and October 2019 in the Maltese Islands:

By several acts committed by you, even if at different times, which constituted violations of the same provisions of the law, and were committed in pursuance of the same design, are deemed to be a single offence, called a continuous offence (Chapter 9, Article 18).

1. failed to give Laura Jean Temple, the sum of 400 Euro per month fixed by the Court or as laid down in the contract as maintenance for his child(ren) and/or wife, within fifteen days from the day on which according to such order or contract, such sum should have been paid (Chapter 9, Article 338 (z))

Having seen the judgement meted by the Court of Magistrates (Malta) as a Court of Criminal Judicature proffered on the 9th July, 2021, whereby the Court Articles 7, 8, 18, 31 (g) and 338 (z) of Chapter 9 of the Laws of Malta found the accused guilty of all charges brought against him and condemns him to 1 month effective imprisonment.

Having seen the appeal application presented by the Attorney General in the registry of this Court on the 21st June 2021, whereby this Court to revoke, reverse, or annul said judgment by:

- 1) Revoking or annulling the part of the judgment where the Court found him guilty of all charges brought against him, and instead declaring him not guilty of said charges and acquit him of any liability and punishment.
- 2) In case of a negative outcome, the appellant requests this Honourable Court to vary or reverse the punishment of imprisonment and apply instead a punishment that is more just and equitable, considering all the circumstances of the case.

Having seen the acts of the proceedings;

Having seen the updated conduct sheet of the appealed, presented by the prosecution as requested by this Court.

Having seen the grounds for appeal of Ashley John Galea:

That the appellant's grievance is clear and manifest and consists of the following:

- (i) In the first place, the appellant wishes to plead that the criminal action for this contravention is time barred by the lapse of six months from the date of this instantaneous offence in terms of the first proviso of Art 338 (2) of the Criminal Code. The charges brought against the appellant refer to the months of September 2019 and October 2019. The appellant was notified with the charges on 29 January 2021, for the first sitting held on February 2021. Thus, the action was time-barred as the applicant was notified later than 6 months - specifically, 15 months-from the alleged offence;
- (ii) That, without prejudice to the aforesaid plea of prescription, which may be raised at any stage of the proceedings, including at the appeal stage, prescription being a plea concerning public order, the punishment inflicted by the First Court on the appellant is clearly excessive and doesn't do justice to the circumstances of the case and this for several reasons which shall all be duly explained and expounded upon in the course of oral pleadings before this Honourable Court in relation to this present appeal and which include but are not limited to the following
- (iii) That the First Court failed to give due consideration to the fact that if the appellant is given an effective prison sentence, the imposition of the prison sentence would likely result in the appellant losing his new job where he is still on probation, inflicting further hardship on the appellant's children since the appellant from prison and without employment would not be able to pay any maintenance;
- (iv) That the aim of Art 338 (2) is not retributive, but rather to apply pressure on those obliged to pay maintenance to honour their commitments. That in such cases, the imposition of an effective prison sentence is, respectfully,

abhorrent if it does not achieve the purpose of payment of maintenance as due by decree or contract. That an effective prison judgment in such cases does not reach a just balance between the retributive and reformative aspects of the law, a concept that is much emphasised and accepted in today's criminal justice system. Imposing a prison sentence does not reflect the ultimate intention of the legislator, but effectively ensures that the purpose of the legislation is not attained. Rather, the opposite will be achieved since the appellant will have no means of paying maintenance while in prison, and risks losing his source of income that ensures future honouring of his commitments;

- (v) That although the appellant had been successful in eventually finding employment around October 2019, Laura Jean Temple had managed to interfere with his employment instead of supporting him in keeping it, which would make it easier for him to honour his maintenance obligations. That her actions of constantly dragging him into Court with frivolous accusations resulted in him being asked to resign from his employment while still on probation in May 2020. That the actions of Laura Jean Temple show that her intent was never one of obtaining financial support for raising the children (which, as shall be amply proven during the proceedings, she was getting) but to make sure that she humiliates the appellant by ensuring that he ends up in jail. That appellant is now living in fear that this situation will repeat itself with his current employment should he be subjected to an effective prison sentence.
- (vi) That it is understood that Art 338(2) explains that the appellant cannot bring forward any grievance with regards to his guilt. fact the judgement of the Criminal Court of Appeal, **Il-Pulizija v Alfred Camilleri**¹, wherein another

¹ Given by the Criminal Appeal Court Inferior Jurisdiction on the 18th September 2002

judgement of that same Court (Pulizija v Anthony Saliba², was cited, clearly explained that:

'il-fatt li persuna tisfa bla xoghol ma jiskuzahiex mill-obbligu tagħha li twettaq id-Digriet tas-Sekond' Awwla tal-Qorti Civili, obbligu sancit bir-reat tan-natura kontravenzjonali li tahtu hu akkużat l-appellant. Ir-rimedju li għandu u li kellu l-appellant kien li jadixxi tempestivament u fi żmien utili lill-Qorti Civili kompetenti biex din, wara li tiehu konjizzjoni tal-provi, tipprovi billi se mai timmodifika l-ordni dwar il-manteniment. U biss wara li jottjeni tali modifika, li jkun jista' jhallas inqas jekk ikun il-kaz. Sakemm dan isir, jibqa' marbut bl-obbligu tal-ħlas skont l-ewwel digriet.'

However, the appellant was never made aware by his legal counsel at the time that, while he was unemployed, he could apply to the Court to vary the amount of maintenance;

- (vii) That the appellant wishes to emphasise that preceding and during the period under consideration he was in grave financial difficulty since he was unemployed, which difficulty made it impossible for him to honour his maintenance commitments in a timely manner - *nemo ad impossibila tenetur*, That, as a result of being unemployed, the appellant was hardly coping with basic expenses;
- (viii) That reference is made to the reasoning expounded by the Court of Criminal Appeal presided by the Honourable Mr Justice: David Scicluna in II-Pulizija v Andrew Calleja³, wherein the Court of Criminal Appeal replaced a sentence of imprisonment with a non-custodial punishment.

² Given by the Criminal Appeal Court Inferior jurisdiction on the 15th July 1998

³ Given by the Criminal Appeal Court Inferior jurisdiction on the 2nd December 2005

- (ix) That in spite of his financial difficulties, Laura Jean Temple testified herself that the appellant bought clothes and food for the children. In addition, although the appellant had left the matrimonial home, he continued paying his share of the home loan and also started paying Laura Jean Temple's share of said home loan since she had stopped paying it and appellant did not wish to see the bank recalling the home leaving his children homeless. Ms Temple's share of the home loan, which the appellant continued paying in her stead, amounted to €425 per month, which is already more than the €400 per month requested in maintenance, and is even higher when considering the clothing and food expenses he was contributing for the children's wellbeing:
- (x) That the above contributions by the appellant towards the wellbeing of his children were never taken into account neither by the First Court nor by Laura Jean Temple. Laura Jean Temple, in fact, instead of appreciating Ashley John Galea's contributions to the children's necessities and continued financial support in spite of being in financial difficulty himself, appeared intent on extracting her pound of flesh from the appellant;
- (xi) That the First Court gave little or no consideration to the fact that this was the first occasion where the appellant failed to abide by the Family Court's decree awarding maintenance.

The Court heard the defence lawyer state in court on the 24th February 2022 that the appellant paid the complainant Laura Jean Templeman the balance due to her. Present in court was Laura Jean Templeman assisted by her lawyer Dr. Stephanie Caruana who confirmed that in relation to this pending matter she had no further monetary pretensions with regard to the appellant.

The Court took note of the updated conviction sheet of the appellant exhibited at fol. 65 of the proceedings wherein it results that the appellant has a clean conduct sheet with no contraventions or crimes registered on it.

The appellant complained of the punishment awarded in that it was excessive since he did not commit this contravention capriciously but because he was going through financial difficulties. However, the Court states at this very early stage of the judgment that the punishment awarded fell within the parameters of the law. In this regard the court makes reference to a very recent judgment in the names **“il-Pulizija vs Simon Desira**⁴ wherein the court stated that: -

Illu tajjeb li jkun osservat in primis illi l-ewwel Qorti kkominat piena li hija fil-parametri ghar-reat li dwaru l-imputat instab hati u kif kostantement deciz minn din il-Qorti, ma huwiex normali li tkun disturbata d-diskrezzjoni ezercitata mill-ewwel Qorti fil-kominazzjoni tal-piena sakemm ma jkun hemm xejn x'juri li din kellha tkun anqas jew aktar minn dik erogata. Irid jinghad, izda, **illi f'kawzi ta' mertu konsimili, l-ghan tal-legislatur ikun milhuq meta l-imputat jottempera ruhu mal-ordni tal-Qorti jew mal-obbligu kontrattwali tieghu li jhallas dak il-manteniment li hu intiz ghall-ghixien tal-ulied jew tal-parti civile.** ⁵U f'dan ir-rigward ta' spiss issir eccezzjoni u hekk ser isir f'dawn il-proceduri wara li l-parte civile ddikjarat illi fil-mori irceviet il-hlas kollu lilha dovut;

In the light of the above and due to the fact that the appellant is a first-time offender, the court is of the opinion that there should be a change in punishment since the

⁴ Decided by the Criminal Court of Appeal on the 4th October 2021. Vide also **il-Pulizija vs Francis Saliba** decided by the same court on the 19th July 2013.

⁵ Emphasis of this same court.

circumstances belonging to this case changed whilst in the stage of appeal and this fact has to be recognised by the court prior to awarding punishment.

The court believes that should it award the imposition of a multa, it would only be making the situation harder for the appellant to meet his obligations to pay maintenance. Due to the fact that this is the first time that the appellant appeared before this court, the court is of the opinion of discharging the appellant in terms of the Probation Act.

The Court thus confirms the judgment of the first court with regard to the establishment of guilt though revokes the punishment given of one-month effective imprisonment and decides to discharge him on condition that he does not commit another offence for a period of three years from today in accordance with section 7 of Chapter 446 of the Laws of Malta.

The Court explained the importance of this judgement to the accused and what would happen should he fail to adhere to it.

(ft) Dr. Consuelo Scerri Herrera
Madame Justice

True copy

Nadia Ciappara
Deputy Registrar